

UNITED STATES DEPARTMENT OF TRANSPORTATION  
FEDERAL AVIATION ADMINISTRATION  
WASHINGTON, D.C.

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IN THE MATTER OF

TAUGHANNOCK AVIATION CORP.

HEARING DOCKET

FAA DOCKET NO. CP08EA0001, -02, -05

(Civil Penalty Case)

DMS NO. FAA-2007-0355, -0356, 2008-0236

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COMPLAINANT'S MOTION FOR CHANGE IN HEARING LOCATION

COMES NOW the Federal Aviation Administration ("FAA"), by and through her designated and authorized representative, the Regional Counsel for the Eastern Region, and her designated and authorized representatives, pursuant to 14 C.F.R. Section 13 *et seq.*, to move for a change in the proposed hearing location in each of three civil penalty cases. Specifically, each case has been set for Kansas City, Missouri. The Complainant requests the hearing location be in Rochester, New York, or alternatively, Syracuse, New York. The Respondent does not join in the motion and has expressed opposition to it.

STATEMENT OF THE CASE

The FAA's Complaint filed in Docket No. CP08EA0001 alleges that:

1. Taughannock Aviation Corp. ("TAC") is the holder of Air Carrier Certificate No. BJYA490C.
2. On or about December 17 and 18, 2005, TAC used pilots Raymond Shenise and Joseph Sabin in operations conducted under FAR Part 135, using a Gulfstream G-IV aircraft, between Ithaca, New York; Bucharest, Romania; and Shannon, Ireland.
3. TAC used Joseph Sabin as pilot-in-command of the flight described above although, since the beginning of the 12th calendar month before that service, he had not passed a flight check in the type of aircraft which he did fly.

4. Further, TAC failed to ensure that the pilots described above were adequately trained to meet the applicable knowledge and practical testing requirements of Part 135.
5. Further, TAC provided credit for previous training the pilots received without the Administrator's approval as required by TAC's training manual.
6. Further, TAC failed to keep at its principal business office or at other places approved by the Administrator, and failed to make available for inspection by the Administrator, an individual record of Raymond Shenise, including his aeronautical experience in sufficient detail to determine his qualifications to pilot aircraft in operations under FAR part 135.
7. At all times relevant herein, TAC used Raymond Shenise as a flight instructor although:
  - a. He had not satisfactorily completed initial or transition flight instructor training; and
  - b. Within the preceding 24 calendar months, he had not satisfactorily conducted instruction under the observation of an FAA inspector, an operator check airman, or an aircrew designated examiner employed by TAC.
8. At all times relevant herein, TAC failed to keep at its principal business office or at other places approved by the Administrator, and failed to make available for inspection by the Administrator, an individual record of the following pilots used in operations under FAR part 135, including each pilot's check authorization, if any:
  - a. Robert Thomas;
  - b. Warrne Brown;
  - c. Steven Novak;
  - d. Joseph Sabin.

By reason of the foregoing, Taughannock Aviation Corp. violated the following section(s) of the Federal Aviation Regulations:

1. Section 135.299(a), which states that no certificate holder may use a pilot, nor may any person serve, as a pilot in command of a flight unless, since the beginning of the 12th calendar month before that service, that pilot has passed a flight check in one of the types of aircraft which that pilot is to fly.

2. Section 135.323(a)(1), which states that each certificate holder required to have a training program under §135.341 shall establish, obtain the appropriate initial and final approval of, and provide a training program that meets this subpart and ensures that each crewmember, flight instructor, check airman, and each person assigned duties for the carriage and handling of hazardous materials is adequately trained to perform their assigned duties.
3. Section 135.340(a), which states that no certificate holder may use a person nor may any person serve as a flight instructor unless – (1) that person has satisfactorily completed initial or transition flight instructor training; and (2) within the preceding 24 calendar months, that person satisfactorily conducts instruction under the observation of an FAA inspector, and operator check airman, or an aircrew designated examiner employed by the operator.
4. Section 135.341(a), which states that each certificate holder, other than one who uses only one pilot, shall establish and maintain an approved pilot training program, and each certificate holder who uses a flight attendant shall establish and maintain an approved flight attendant training program, that is appropriate to the operations to which each pilot and each flight attendant is to be assigned, and will ensure that they are adequately trained to meet the applicable knowledge and practical testing requirements of Part 135.
5. Section 135.63(a)(4)(iii), which states that each certificate holder shall keep at its principal business office or at other places approved by the Administrator, and shall make available for inspection by the Administrator, an individual record of each pilot used in operations under this part, including the pilot's aeronautical experience in sufficient detail to determine the pilot's qualifications to pilot aircraft in operations under this part.
6. Section 135.63(a)(4)(viii), which states that each certificate holder shall keep at its principal business office or at other places approved by the Administrator, and shall make available for inspection by the Administrator, an individual record of each pilot used in operations under this part, including the pilot's check authorization, if any.

The FAA's Complaint filed in Docket No. CP08EA0002 alleges that:

1. Taughannock Aviation Corp. ("TAC") is the holder of Air Carrier Certificate No. BJYA490C.
2. On or about January 16, 2006, TAC prepared a load manifest for a flight with various flight legs between White Plains, New York; Ithaca, New York; and Las Vegas, Nevada.

3. However, the load manifest identified the PIC and the SIC although those persons, Dominguez and Shenise, were not the crew members assigned to each flight or flight leg described on the load manifest.
4. In addition, crew members who were the PIC and SIC on flight legs described on the load manifest were not identified at all.
5. As a result, TAC failed to prepare a load manifest that accurately included the identification of crew members and their crew position assignments.

By reason of the foregoing, Taughannock Aviation Corp. violated the following section(s) of the Federal Aviation Regulations:

1. Section 135.63(c), which states that for multiengine aircraft, each certificate holder is responsible for the preparation and accuracy of a load manifest in duplicate containing information concerning the loading of the aircraft. The manifest must be prepared before each takeoff and include the information required under this part.

The FAA's Complaint filed in Docket No. CP08EA0005 alleges that:

1. Taughannock Aviation Corp. ("TAC") is the holder of Air Carrier Certificate No. BJYA490C.
2. On or about December 8, 2005, TAC operated a Falcon 20 aircraft, identification number N1881Q, on a flight between Ithaca, New York and Rochester, New York.
3. During the December 8 flight, the number one brake system was inoperative.
4. On or about December 17, 2005, TAC operated a Falcon 20 aircraft, identification number N1881Q on four flights between Ithaca, New York; Rochester, New York; and Washington-Dulles Airport, Virginia.
5. During the December 17 flight, the Captain's attitude indicator (artificial horizon) was inoperative.
6. As a result, TAC operated the aircraft described above under FAR part 135 although required instruments and equipment in it were not in an operable condition.

7. Further, for each flight described above, the pilot in command failed to enter or have entered in the aircraft maintenance log each mechanical irregularity that came to the pilot's attention during flight time.

By reason of the foregoing, Taughannock Aviation Corp. violated the following section(s) of the Federal Aviation Regulations:

1. Section 135.143(b), which states that, except as otherwise provided, no person may operate an aircraft under this part unless the required instruments and equipment in it have been approved and are in an operable condition.
2. Section 135.65(b), which states that the pilot in command shall enter or have entered in the aircraft maintenance log each mechanical irregularity that comes to the pilot's attention during flight time. Before each flight, the pilot in command shall, if the pilot does not already know, determine the status of each irregularity entered in the maintenance log at the end of the preceding flight.

The Respondent answered each Complaint but did not deny where the flights or the violations are alleged to have taken place.

#### APPLICABLE LAW

Under section 13.221(b) of the applicable Rules of Practice in FAA Civil Penalty Actions (14 C.F.R. § 13.201 *et seq*), as to the location for the hearing, it is provided that: "The administrative law judge shall give due regard to the convenience of the parties, the location where the majority of the witnesses reside or work, and whether the location is served by a scheduled air carrier."

#### ARGUMENT

Giving due regard to the convenience of the parties, the location where the majority of the witnesses reside or work, and whether the location is served by a scheduled air carrier, the hearing location for the hearing in this matter should be set for Rochester, New York (or alternatively, Syracuse, New York).

The Respondent is a certificated air carrier (under 14 CFR Parts 119 and 135) and it is not disputed that it is headquartered in Ithaca, New York. By use of an internet search engine such as Mapquest, the Complainant requests that judicial notice be given that Ithaca is located about one hour (by car, less by airplane) from Syracuse, New York and about two hours from Rochester, New York (by car, less by airplane).

The FAA anticipates calling as witnesses to testify at the hearing its Aviation Safety Inspectors who investigated the case and those who manage the Respondent's air carrier certificate – all the witnesses are located in or near Rochester, New York. The FAA also anticipates calling as witnesses the pilots of the flights in question, who are or were employed with the Respondent in New York.

All the alleged flights took place in Ithaca, New York – in one case to Rochester, in another to White Plains, New York, and to Washington, and in one case to Europe.

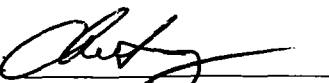
The hearing location should be set for the convenience of the witnesses located in New York and also take into account where evidence is located – for example, the flight records which are located in the Respondent's office in Ithaca or at the FAA office in Rochester. None of the cases have any connection with Kansas City, Missouri, a venue convenient only to the Respondent's counsel, a well-known aviation attorney with a nationwide practice. However, it would be inconvenient and costly to the government to transport witnesses to Kansas City.

As the Respondent is an international air carrier with aircraft at its disposal that are used in interstate and international commerce, it can by no means be inconvenient to the Respondent to have a consolidated hearing in the three cases be set near its office in a city with available federal hearing space – Rochester (or Syracuse), New York. In addition, commercial air carriers adequately service both Rochester and Syracuse.

CONCLUSION

WHEREFORE, the FAA respectfully requests that the hearing location be set for Rochester, New York, or alternatively, Syracuse, New York.

Respectfully submitted,  
LORETTA E. ALKALAY  
Regional Counsel

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CERTIFICATE OF SERVICE


I hereby certify that on this date copies of the Complainant's motion to change hearing location was sent by *Federal Express Overnight* to the following:

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Hearing Docket  
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Dated: May 3, 2008

  
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